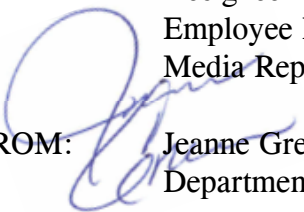




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MEMO PERD #56/06
December 5, 2006

TO: Personnel Commission Members
Department Directors
Division Administrators
Agency Personnel Liaisons
Agency Personnel Representatives
Designee for Rules Distribution
Employee Representatives
Media Representatives

FROM:  Jeanne Greene, Director
Department of Personnel

SUBJECT: CORRECTED PERSONNEL COMMISSION MEETING MINUTES

Attached are the minutes from the August 11, 2006, Personnel Commission meeting, previously distributed on October 16, 2006. The Personnel Commission approved the corrected minutes at their meeting on December 1, 2006.

JG:sb

Attachment

**PERSONNEL COMMISSION
AUGUST 11, 2006 MEETING MINUTES**

**Indicates agenda items that were voted on by the Personnel Commission.*

**MEMO PERD #56/06
December 5, 2006**

I. Call to Order

Chairman Claudette Enus called the meeting to order at 8:04 a.m., August 11, 2006, at the Grant Sawyer Building, Room 4412, 555 East Washington Avenue, Las Vegas, and the Legislative Building, Room 4100, 401 South Carson Street, Carson City via videoconferencing.

Members present in Las Vegas: Chairman Claudette Enus and Commissioner David Sánchez; and Director Jeanne Greene from the Department of Personnel.

Members present in Carson City: Commissioners Jack Eastwick, Katherine Fox, and David Read; Shelley Blotter, Chief of Technical Services, Department of Personnel; and Jim Spencer, Chief Deputy Attorney General, Attorney General's Office.

II. *Adoption of Agenda

Commissioner Eastwick's motion to adopt the agenda was seconded by Commissioner Read and unanimously carried.

III. *Adoption of Minutes of Previous Meeting

Commissioner Read's motion to approve the minutes of the May 12, 2006, meeting as presented was seconded by Commissioner Eastwick and unanimously carried.

IV. *Approval of Additional Southern Alternate Hearings Officer
Ann Elworth Winner

Ann Elworth Winner refreshed the Commission on her qualifications. Ms. Elworth Winner was interviewed at the May 12, 2006, Commission meeting but was not appointed at that time as there was only one position.

Director Jeanne Greene stated the Department needed an additional alternate Hearings Officer in the South to save on resources.

There being no questions or comments, Commissioner Sánchez's motion to appoint Ann Elworth Winner as the second Alternate Hearings Officer in the South was seconded by Commissioner Read and unanimously carried.

V. *Prohibitions & Penalties
Department of Cultural Affairs

Scott Sisco, Director, Department of Cultural Affairs, requested approval of their prohibitions and penalties. Mr. Sisco explained they used the same language used in other agency prohibitions and penalties previously approved by the Commission.

Commissioner Sánchez inquiring about Item 20, under section B. Job Performance, asked whether an individual could return to work after a one or two-day suspension of a driver's license.

Mr. Sisco responded it was the same language other agencies were approved to use; however, no positions in his agency required a driver's license either in class requirements or work performance standards.

Chairman Enus believed that Item B20 was the same language as a regulation on the agenda proposed for amendment, which provides for any certification or license that's a condition of employment, which is not maintained would subject the employee to termination.

Shelley Blotter, Chief of Technical Services, stated Chairman Enus was correct. The appointing authority could terminate an individual in that situation; however, it's permissive and not a requirement. That answered Commissioner Sánchez's question.

There being no further discussion, Commissioner Eastwick's motion to approve the Department of Cultural Affairs' Prohibitions & Penalties as presented was seconded by Commissioner Fox and unanimously carried.

VI. *Pre-Employment Screening for Controlled Substances

Renee Travis, Personnel Analyst, Department of Personnel, explained that NRS 284.4066 authorizes agencies to designate positions affecting public safety and screen applicants prior to appointment for controlled substances. She explained the following positions had been requested to be added to the list of those affecting public safety:

AGENCY	CLASS CODE	CLASS TITLE	BUDGET & POSITION CONTROL NUMBER
PARKS	1.907	Parks Regional Manager – Non Commissioned	ALL
	1.967	Park Supervisor III – Non Commissioned	ALL
	1.968	Park Supervisor II – Non Commissioned	
	1.969	Park Supervisor I – Non Commissioned	
NDOT	9.334	Fleet Service Worker IV	ALL
FORESTRY	9.353	Air Operations Supervisor	ALL

Steve Silva, Sr. Law Enforcement Specialist, Parks Division, Department of Conservation & Natural Resources, explained there was a clerical oversight on their non-commissioned positions when they were changed from commissioned status.

There being no questions or comments, Commissioner Read's motion to approve the recommendation as presented was seconded by Commissioner Fox and unanimously carried.

VII. *Regulation Changes to Nevada Administrative Code, Chapter 284
Proposed for Permanent Adoption

Shelley Blotter, Chief of Technical Services, Department of Personnel, explained the purpose of the proposed changes was to discourage employees from inappropriate conduct that has happened and continues to happen during State working hours. The regulations alone will not stop employees from making bad choices but they do provide notice to employees of expected conduct, and a tool for management to effectively respond to such activity and provide a safe and productive work environment for employees.

With support from the Governor, the Department of Personnel brought the following changes for the Commission's approval:

Sec. 1 Addition of new sections to NAC Chapter 284

Ms. Blotter explained this section adds the provisions in sections 2 to 5, inclusive, to NAC 284. Therefore, she suggested holding it until after discussing sections 2 to 5.

Chairman Enus asked to hear the explanations of sections 2 to 5 as a group.

Sec. 2 NEW "Premises of the workplace" defined

This amendment, proposed by the Legal Division of the Legislative Counsel Bureau, defines the term "Premises of the workplace" as used in NAC 284. This language is an expansion of the language that was previously used in subsection 21 of NAC 284.650. This term is now being defined for use in other subsections of NAC 284.650 and sections of NAC 284.

There were no questions or comments.

Sec. 3 NEW "Sexual conduct" defined

This amendment, proposed by the Legal Division of the Legislative Counsel Bureau, defines the term "Sexual conduct" as used in NAC 284.

Ms. Blotter explained this section may be more descriptive than is comfortable, but it has become necessary to identify what it actually is. The Legislative Counsel Bureau advised this definition is used throughout NRS.

See minutes below Sec. 5 for more comments on Sec. 3.

Sec. 4 NEW “Sexual harassment” defined

This amendment, proposed by the Legal Division of the Legislative Counsel Bureau, defines the term “Sexual harassment” as used in NAC 284.

Ms. Blotter explained this language was previously reflected in another regulation but because it’s now used in more than one section or subsection, it had become a term that will be reflected in the General Provisions.

There were no questions or comments.

Sec. 5 NEW Report of arrest, conviction, or traffic violation

This amendment, proposed by the Department of Personnel, requires an employee to report to his appointing authority his arrest for or conviction of a criminal offense which is a misdemeanor, gross misdemeanor or felony including traffic offenses. The appointing authority may immediately dismiss the employee if the conviction has an adverse impact on the State of Nevada.

Ms. Blotter explained this section had changed since it was presented at the Workshop. Language that stated discipline could be taken for an arrest alone, unless the employee failed to report it timely, had been removed.

In addition, Ms. Blotter stated that LCB made an editing change to subsection 1, second sentence, “An employee is not required to report to his appointing authority...” The new language continues “...*a violation of a traffic law pursuant to Chapter 484 of NRS or equivalent law in another state that he committed unless a driver’s license is a requirement of the employee’s position at the time of appointment as stated in the standards of work performance, essential functions or class specifications for the position.*”

Ms. Blotter explained the change moved the words “he committed” to after the NRS cite, and out-of-state traffic violations were added.

Commissioner Fox asked how the regulation would be administered. Would discipline be based on the egregiousness of the arrest with management making a decision on the level of discipline? Ms. Blotter explained that instances of arrest would not be disciplined unless there was a conviction, and it may have nothing to do with an employee’s job.

Kareen Masters, Deputy Director, Administrative Services, Department of Health & Human Services, stated her agency supported the original language in which arrest was included. Absent that language she felt it was important to add another subsection to read, “*Nothing in this section precludes an appointing authority from taking disciplinary action or any other cause of action set forth in NAC 284.*” Ms. Masters gave a scenario to justify the additional language.

Commissioner Fox thought there were other regulations in NAC 284 relating to employee behavior. Ms. Masters agreed, but wanted to make sure it is clear with this particular regulation.

Chairman Enus asked Chief Deputy Attorney General Jim Spencer to comment on Ms. Master's recommendation, saying she understood Ms. Masters' concern.

Mr. Spencer didn't think the language was really necessary because under Ms. Masters' scenario there would be another cause of action under NAC 284.650, which would be handled separately from the arrest; however, it would not harm to put it in for clarification.

Chairman Enus asked Mr. Spencer whether they had the authority to include the language recommended by Ms. Masters. Mr. Spencer stated they did.

In addition, Ms. Blotter asked that the new language she read into the record also be added. Chairman Enus acknowledged the request.

Dennis Colling, Chief of Administration, Department of Motor Vehicles, stated that Sec. 5 was fatally flawed. He believed the proposed regulation would punish someone prior to the determination of innocence or guilt. Misdemeanors can be received for almost anything (e.g. a dispute with a neighbor) and most aren't work related. Then within five days someone could be fired for something for which they're not convicted. Mr. Colling felt it would generate lawsuits because it violates a person's rights.

Gary Wolff, Representative, Teamster's Local 14, and a 31-year retired police officer, 25 years of which were with the Nevada Highway Patrol, addressed out-of-state traffic citations, which in most states is a misdemeanor crime and may not even be reported. He stated that reporting such citations made no sense.

Mr. Wolff asked why all State employees weren't included in the regulation. He felt it was discriminatory and gave a scenario of an employee (driver license not required for job) with unknown traffic violations using a motor pool vehicle that the State's liable for to attend a business function. He was happy that Ms. Blotter stated this was during working hours. Off-duty, employees have a private life and traffic violations do not meet the definition of a serious crime.

Jeanine Lake, Employee Representative, State of Nevada Employees' Association, AFSCME Local 4041, said they objected to Sec. 5 and she concurred with the statements made by Mr. Colling and Mr. Wolff. Ms. Lake stated there are stipulations already in place for positions requiring driver licenses, and asked the Commission to not pass Sec. 5.

Mr. Colling explained that as an administrator he follows a procedure and has successfully terminated a number of employees for various reasons. He addressed subsection 3 which gives an appointing authority permission to immediately dismiss an employee if they fail to report a traffic violation. Sec. 5 to him says that if they don't call, he has to fire them.

Chairman Enus told Mr. Colling that the language was clearly discretionary and didn't say *shall* or *will*. To her it said that you consider the facts prior to taking any disciplinary action. Chairman Enus stated the burden was on employees to disclose things going on in their lives that may impact their employment.

Ms. Masters stated that the Department of Health & Human Services supports the reporting of traffic violations as some of their employees are responsible for transporting clients. If there is still an objection to the language, she suggested narrowing the violations to those identified by the appointing authority as being appropriate to report.

Tom Donaldson, Partner, Dyer•Lawrence Attorneys & Counselors At Law, explained they had taken over Wally Tarantino's practice and most of his clients. Mr. Donaldson stated he now represents the Nevada Corrections Association and the Nevada Department of Public Safety Association. He stated they opposed Sec. 5 as it was related primarily to off-duty conduct and not employees' positions. Most traffic violations are not considered serious in nature; and singling out employees who are required to have a valid driver's license for their job is discriminatory.

Referring to Mr. Wolff's scenario, Commissioner Sánchez asked whether there are prohibitions and penalties in place to address the use of State vehicles when an employee's position doesn't require a driver's license. Mr. Spencer stated there was no provision in NAC 284.650.

Mr. Spencer gave the Commission background on his involvement with Sec. 5. When it was originally presented to him for review, he had a problem with discipline upon arrest for some of the reasons Mr. Colling addressed (innocent until proven guilty). Director Greene had explained to him that one reason the State needed it was for scheduling purposes if the employee would need time off to attend court. Mr. Spencer felt it was a valid State interest, but what he's hearing from the opposition is a concern that an arrest and the failure to report it will result immediately in dismissal.

Mr. Spencer stated that Chairman Enus clarified that the regulation is discretionary and progressive discipline would be required before dismissal. Mr. Spencer suggested they remove the dismissal language as it may be too harsh and there's really no need to mention dismissal, as progressive discipline is required by NRS. He stated they could just make it a requirement for employees to disclose violations within five days, and the appointing authority will determine the discipline. Ms. Blotter stated that if the Commission went with Mr. Spencer's recommendation, they could simply remove subsection 3a and approve it as written.

Mr. Wolff stated he had a problem with reporting within five days. He suggested it be reported on the employee's next scheduled shift if he is not on duty during the five-day period.

Ms. Blotter stated the language could be added.

Chairman Enus was becoming uncomfortable with approving the multiple revisions to Sec. 5. Commissioner Read agreed and asked if it could be tabled until the next meeting. Commissioner Sánchez seconded Mr. Read's motion. Chairman Enus accepted the motion and asked for comments.

If delayed until the December 2006 meeting, Director Greene said they would be only temporary regulations, and would need to be approved a second time. Ms. Blotter added that if the language wasn't adopted at this meeting, language removed from NAC 284.650 would need to be reinstated.

Commissioner Read suggested they approve sections 1 through 4 and revisit Sec. 5 later in the meeting when they could look at a clean copy that incorporates the discussed changes. Ms. Blotter stated she could work on the revisions and bring it back before the Commission adjourned.

Ms. Blotter preferred the Commission to go ahead and address the remaining regulation changes, but Commissioner Read felt they should go forward with sections 1 through 4 and abey Sec. 5 until the revisions were made.

Phil Brittenham, Personnel Officer, Department of Motor Vehicles, noticed that a lot of the discussion had been around the reporting of citations, but thought Mr. Colling's concern was with having to report at all. He felt the Department of Personnel hadn't really demonstrated a need for this language or concern. How many times have we had issues with employees embarrassing the State or causing their department a problem because they received a citation or were arrested and didn't notify their employer? He was not convinced it was a problem.

Discussion on Sec. 3, sexual conduct defined

Mr. Brittenham addressed Sec. 3, sexual conduct, and Ms. Blotter's earlier comment that the definitions were straight from NRS so it's fairly common language. They are also definitions out of the section for crimes against decency and morals. Sexual activity is not a crime, but ignoring your job is. Now the activity is criminal and he thought a lot of people would be hurt by the regulation. There are hundreds of married couples, and people meet, in the workplace. Mr. Brittenham didn't condone sexual activity in the workplace, but there are a lot of foolish people out there in the line of the bullet. He didn't think it was reasonable to describe behavior which will punish people who are foolish in the workplace. He didn't feel the Department had demonstrated a need for the definition and asked if there are an overwhelming number of sexual harassment cases being investigated. Mr. Brittenham asked the Commission to not adopt Sec. 3.

Ms. Blotter responded that Sec. 3 describes sexual conduct. It didn't say that it's a crime; it just defines what sexual conduct is. When the regulation was originally drafted, it became a question of what exactly are we talking about? All the Department wanted to accomplish was to define what we're talking about and then use the term *sexual conduct* when talking about what things impact an individual's employment. The Department wants employees to know not to do it while they're working for the citizens of Nevada. The expectation is that we shouldn't have to go through progressive discipline if the activity is so egregious, you should be able to terminate immediately; however, it is discretionary.

Ms. Blotter added that it's not just foolish behavior it's costly behavior. The State of Nevada is paying out thousands of dollars where the relationship started out consensual and subsequently someone became dissatisfied. It's not only in money awards, but it's also in staff time to investigate these types of activities.

Mr. Colling explained that he understood the terms *discretionary* and *may*; however, he was concerned about the bad administrator who personally dislikes an employee and uses it to get rid of them.

Commissioner Fox asked the Chairman to restate the motion.

Chairman Enus restated the motion saying Commissioner Read had moved they adopt sections 1 through 4 and abey Sec. 5 until later in the meeting. The motion was seconded by Commissioner Sánchez and unanimously carried.

Sec. 6 NAC 284.010 Definitions

This amendment, proposed by the Legal Division of the Legislative Counsel Bureau, incorporates the newly proposed definitions for “Premises of the workplace,” “Sexual conduct,” and “Sexual harassment” into the General Provisions of NAC 284.

Ms. Blotter explained this section incorporates sections 2, 3, and 4 into the General Provisions.

There being no comments or questions, Commissioner Fox’s motion to adopt Sec. 6 was seconded by Commissioner Eastwick and unanimously carried.

Sec. 7 NAC 284.642 Suspensions

This amendment, proposed by the Department of Personnel, groups together disciplinary actions related to suspensions and demotions.

Kareen Masters, Deputy Director, Administrative Services, Department of Health & Human Services, suggested referencing the disciplinary regulations within Sec. 7, or include them in NAC 284.650, subs. 1a and 1b to read *for any cause set forth in NAC 284.650, 284.646, or Sec. 5 of these regulations*.

Chairman Enus asked whether the specific regulation cites could be removed and simply say *as set forth in NAC 284*.

Commissioner Sánchez asked what the consequences would be if they adopted Ms. Masters language.

Jim Spencer, Chief Deputy Attorney General, understood that Ms. Masters was saying we don’t have a complete list with just 284.650. Mr. Spencer felt Chairman Enus’ suggestion of referring to them generally would cover them all. Ms. Masters stated that would address her concerns.

Commissioner Fox’s motion moved to adopt Sec. 7 with the additional language identified under subs. 1a and 1b and the language *as set forth in Chapter 284 of NAC*, was seconded by Commissioner Sánchez and unanimously carried.

Sec. 8 NAC 284.646 *Demotions and Dismissals*

This amendment, proposed by the Department of Personnel, allows for immediate termination for certain offenses committed by an employee. These types of activities compromise the services provided by the State and place the State at an increased risk for legal and monetary claims. An employee dismissed as set forth in this section would be able to appeal the immediate termination and have his concerns heard by a hearings officer.

Ms. Blotter explained this section was amended to address dismissals exclusively.

Scott Sisco, Director, Department of Cultural Affairs (DCA), addressed subs. 4c saying it was difficult to define what is pornography and what is art. Mr. Sisco gave examples of the statue of David, and a former DCA director who had an abstract piece of art with a nude hanging in his office. Mr. Sisco asked how supervisors are going to understand the mindset of people viewing these items to determine whether they're looking for artistic reasons or for shameful, morbid interest. Mr. Sisco felt the definition would get the State into trouble because even the State Arts Council has difficulty defining projects.

Commissioner Sánchez said his name is David and he works for the art institute of Las Vegas. He shared Mr. Sisco's concerns. Commissioner Sánchez asked Mr. Spencer whether there was an adequate definition of pornography anywhere in the statutes that would take care of this concern.

Mr. Spencer replied that the statutes have been used to successfully prosecute child pornography. He stated there is a problem with employees viewing questionable materials. There may be a gray area and appointing authorities may fail to discipline because someone determines it's art, but the safety net is the Hearings Officer who will determine whether the appointing authority was correct in imposing discipline. Mr. Spencer felt this section was a generic and common definition of pornography. It may be difficult to apply, but the Department says there's a need to prevent this kind of conduct.

There being no further comments or questions, Commissioner Read's motion to adopt Sec. 8 was seconded by Commissioner Sánchez and unanimously carried.

Sec. 9 NAC 284.650 *Causes for disciplinary action*

This amendment, proposed by the Department of Personnel, provides additional categories of serious infractions that are subject to disciplinary action. An appointing authority may, based on the facts of the situation, initiate discipline under this section.

Ms. Blotter stated that language moved to other sections had been deleted, e.g. subs. 19 regarding loss/revocation of licensure and the definition of workplace from subs. 20. In addition, subs. 22 and 23 dealing with sexual harassment and administrative investigations were inserted.

There being no comments or questions, Commissioner Read's motion to adopt Sec. 9 was seconded by Commissioner Eastwick and unanimously carried.

Sec. 10 NAC 284.653 *Driving under the influence; unlawful acts involving controlled substance*

This amendment, proposed by the Department of Personnel, allows for disciplinary action when the final charge is not driving under the influence or another offense for which driving under the influence is an element of the charge, e.g., destruction of property, failure to yield.

Additionally, the language in subsection 4 was removed and Sec. 5 is recommended to address the requirement for an employee to report the conviction of a misdemeanor or felony to his appointing authority.

There being no comments or questions, Commissioner Eastwick's motion to adopt Sec. 10 as presented was seconded by Commissioner Read and unanimously carried.

Sec. 11 NAC 284.771 *Sexual harassment*

This amendment, proposed by the Department of Personnel, clarifies that employees may be terminated from employment if they commit sexual harassment even if it is a first time offense.

The definition of sexual harassment was moved to Sec. 4 and created its own section.

There being no comments or questions, Commissioner Sánchez's motion to adopt Sec. 11 was seconded by Commissioner Fox and unanimously carried.

Sec. 12 NAC 284.884 *Maximum allowable concentrations of alcohol in blood or breath of employee; confirmation of positive result on screening test of breath*

This amendment, proposed by the Legal Division of the Legislative Counsel Bureau, incorporates the newly proposed section related to reporting of arrests, convictions, and traffic violations.

Ms. Blotter asked to hold discussion on this section until after the Commission made a decision on Sec. 5, as it is referenced in Sec. 12.

Chairman Enus stated they would abey sections 5 and 12 and consider them after hearing Item IX.

VIII. *Approval of Occupational Group Study Revised Class Specifications

Mary Day, Supervisory Personnel Analyst, Department of Personnel, explained the Department had class specifications from three different occupational group studies for their approval. This would close the studies on the Engineering & Allied and Mechanical & Construction Trades occupational groups, leaving the Fiscal Management & Staff Services group.

A. Engineering & Allied occupational group

Subgroup: Engineering

Professional Engineering Specialist, P.E.

Vivian Spiker, Personnel Analyst, Department of Personnel, explained the Department of Transportation identified a new level of work performed by professional engineers who work as technical experts in a specialty area. They conduct conceptual design alternative analyses, interpretation and complex problem solving. With assistance from subject matter experts, the Department developed a new class, recommended grade 42, two grades above the Professional Engineer class to recognize the advanced level duties and responsibilities. Due to the fiscal impact, this class specification won't become effective until July 1, 2007, pending funding by the Legislature.

There being no questions or comments, Commissioner Fox's motion to approve Item VIII-A was seconded by Commissioner Read and unanimously carried.

B. Fiscal Management & Staff Services occupational group

1. Subgroup: Materials Acquisition & Services

Buyer series

Brenda Harvey, Personnel Analyst, Department of Personnel, explained the Buyer series was last revised in 1992, but very few changes have occurred since then and only minor revisions to the series and class concepts were necessary. Knowledge, skills and abilities had been revised to better reflect current duties. The minimum qualifications were modified to align with other professional series in this occupational group. This class specification had no fiscal impact and would become effective upon Commission approval.

There being no questions or comments, Commissioner Read's motion to approve Item VIII-B1 was seconded by Commissioner Eastwick and unanimously carried.

2. Subgroup: Property Appraisal, Valuation & Acquisition

State Land Agent series

Vivian Spiker, Personnel Analyst, Department of Personnel, explained the Department updated the duty statements to better describe the expanded role of positions in the series. Since the 1992 study, land, mineral, water and water rights acquisitions and transfers have become increasingly complex. The Division of State Lands identified positions that handle the most difficult and politically sensitive projects and negotiations. As a result, an advanced journey level class, State Land Agent III, was developed at grade 36, which aligns with Right of Way Agent III, grade 36.

The pay grade for the supervisory level, State Land Agent IV, is recommended to increase from grade 36 to grade 39 to align with the Right-of-Way Supervisor, also grade 39. Due to the fiscal impact, this class specification won't become effective until July 1, 2007, pending funding by the Legislature.

There being no questions or comments, Commissioner Read's motion to approve Item VIII-B2 was seconded by Commissioner Eastwick and unanimously carried.

3. Subgroup: Actuarial/Research/Grants Analysis

Transportation Planner/Analyst series

Tewolde Habtemicael, Personnel Analyst, Department of Personnel, explained that with input from subject matter experts, minor changes were made to the Transportation Planner/Analyst series concept and the knowledge, skills and abilities. The class concept for Transportation Planner/Analyst III was expanded to more clearly distinguish work performed at this level.

This class specification had no fiscal impact and would become effective upon Commission approval. There being no questions or comments, Commissioner Fox's motion to approve Item VIII-B3 was seconded by Commissioner Read and unanimously carried.

4. Subgroup: Public Information

Publications Editor series

Vivian Spiker, Personnel Analyst, Department of Personnel, explained the Department recommended minor changes to the Publications Editor series. Subject matter experts assisted in updating the duty statements, and knowledge, skills and abilities to reflect current duties, processes and technology.

This class specification had no fiscal impact and would become effective upon Commission approval. There being no questions or comments, Commissioner Read's motion to approve Item VIII-B4 was seconded by Commissioner Fox and unanimously carried.

5. Subgroup: Information Technology

Imran Hyman, Personnel Analyst, Department of Personnel, presented the classes in this subgroup, which were consolidated from 40 to 22. Information technology (IT) has become an industry standard title and better reflects the nature of this subgroup than the previous title of Electronic Data Processing.

a. *IT Manager series*

The IT Manager series consolidates the Information Systems Manager series, Data Processing Manager series, Computer Operations Manager class, and the management levels of the Information Security Officer series. The duty statements and knowledge, skills, and abilities were updated to reflect current technology and terminology. IT Managers are responsible for planning, organizing, directing, and controlling the IT activities in one or more specialty areas. Benchmark descriptions are provided at each level to show examples of typical assignments and assist in classification.

This class specification had no fiscal impact and would become effective upon Commission approval.

b. *Master IT Professional series*

The Master Information Specialist series had been updated to reflect current technology and terminology. It is recommended that the series be retitled to Master IT Professional for consistency within the occupational subgroup.

Master IT Professionals provide the highest level of professional IT expertise in one or more functional areas such as information systems project management, quality assurance, database administration, network administration, systems administration, applications analysis and development, or information security. This series provides an alternate career path for individuals with advanced certifications that meet the special needs of agencies.

This class specification had no fiscal impact and would become effective upon Commission approval.

c. *IT Professional series*

The IT Professional series consolidates the Computer Operations Supervisor series, Computer Systems Programmer series, Computer Network Specialist series, Database Administrator series, Information Systems Specialist series, professional levels of the Information Security Officer series, and the Computer Information Systems Trainee class.

IT Professionals analyze, develop, implement, maintain, and modify computer operations, systems, networks, databases, applications, and/or information security. The duty statements and knowledge, skills, and abilities were updated to reflect current technology and terminology.

Due to the fiscal impact, this class specification won't become effective until July 1, 2007, pending funding by the Legislature.

d. *Business Process Analyst series*

The Agency/Program Information Specialist series was revised and retitled to better reflect the nature of these positions. Business Process Analysts apply an in-depth knowledge of an agency's program areas to define and implement a solution to a given problem that requires an individually tailored response to meet end-user requirements.

Based upon the analytical nature of work and the knowledge and experience requirements being oriented more towards business processes than information technology, it is recommended that this series be moved to the Administrative & Budget Analysis subgroup within the Fiscal Management & Staff Services occupational group.

Due to the fiscal impact, this class specification won't become effective until July 1, 2007, pending funding by the Legislature.

e. *IT Technician series*

The IT Technician series consolidates the Computer Network Technician series and the Computer Systems Technician series. IT Technicians install, configure, monitor, and maintain networks and monitor and maintain help desk user support or mainframe and server operations. The duty statements and knowledge, skills, and abilities were updated to reflect current technology and terminology. The class provides help desk support and mainframe and server operations technicians, who may progress to the Computer Operations Supervisor series, an additional career option to work with networks.

This class specification had no fiscal impact and would become effective upon Commission approval.

6. Obsolete IT Classes to be Abolished

Mr. Hyman read the IT classes recommended to be abolished into the record. Classes that won't be abolished until July 1, 2007, are indicated in *italics*.

7.905 - Information Systems Manager I

7.903 - Data Processing Manager II

7.936 - Chief Information Security Officer

7.937 - Information Security Officer III

7.944 - Computer Network Technician Trainee

7.911 - *Information Systems Specialist series*

7.912 - *Computer Operations Supervisor series*

7.914 - *Computer Systems Programmer series*

7.916 - *Computer Network Specialist series*

7.938 - Information Security Officer II

7.939 - Information Security Officer I

7.950 - Agency/Program Information Specialist series

Mr. Hyman explained the Department had received some comments concerning the effect of the consolidation of classes in relation to how layoffs would be handled. The Department would be reviewing the regulations to assure that agencies can retain the employees who possess the required skills.

Terry Savage, Director, Department of Information Technology (DoIT), supported the recommendation as it simplifies and reduces the number of classes. It gives management more flexibility and employee's room to grow. He had one reservation that the new series' do not adequately address, which is the enterprise-wide responsibility of DoIT positions; however, Director Greene told him the Department would be able to make revisions at a later time if necessary. He stated he fully supported going forward with the recommended changes, as they are a significant improvement over the current class specifications.

Commissioner Sánchez asked about new certifications as technology evolves. Mr. Savage agreed that IT evolves faster than any other discipline within the State. Mr. Hyman responded the class specifications allow agencies to customize recruitments for the certificates they specifically need.

Alan Rogers, IFS-HR Manager, Department of Personnel, also supported the consolidation of classes adding that it gives agencies flexibility to customize position duties to better fit an individual's skills and simplifies the classification process.

Commissioner Sánchez's motion to approve Items VIII-B5 and VIII-B6 as presented was seconded by Commissioner Read and unanimously carried.

C. Mechanical & Construction Trades occupational group

Subgroup: Road Construction & Maintenance

1. *Highway Maintenance Supervisor series*
2. *Highway Maintenance Worker series*
3. *Highway Construction Aid*

Tewolde Habtemicael, Personnel Analyst, Department of Personnel, explained that subject matter experts (SME's) from the Department of Transportation (NDOT) participated in updating the duty statements, knowledge, skills and abilities, and minimum qualifications of the highway maintenance class specifications.

Mr. Habtemicael explained that work performed by *Highway Construction Aid* positions has experienced little change and only minor updates were needed.

Based on input from the SME's and NDOT management, updates to the *Highway Maintenance Worker (HMW)* series retains the HMW I level as the entry class, makes the HMW II a continuing training level; the HMW III becomes the new journey level, and lead workers are allocated to HMW IV.

Mr. Habtemicael explained that several changes have impacted the work of HMW III's, HMW IV's, and *Highway Maintenance Supervisor I's (HMS)* including the operation of computerized and multifunctional equipment requiring additional training and judgment for proper operation; increased sophistication and complexity in the methods and materials used in highway maintenance and construction; knowledge of accident investigations and mine safety; State and federal regulations governing endangered species and the Clean Water Act; ability to identify and handle hazardous materials; and certification in traffic control techniques and requirements.

As a result of these changes, it was recommended that the HMW III, HMW IV, and HMS I classes be granted a one-grade pay increase. No significant changes were found in the HMW I, II, or HMS II classes since the last study; therefore, no change in grade is recommended. Due to fiscal impact these revised class specifications won't become effective until July 1, 2007, pending funding by the Legislature.

Rick Nelson, Assistant Director, Operations, Department of Transportation, explained they worked closely with the Department in developing the class specifications and supported the recommendations.

There being no other comments, Commissioner Eastwick's motion to approve Item VIII-C as presented was seconded by Commissioner Read and unanimously carried.

IX *Individual Classification Appeals

A. Jo Ann Smith, Administrative Aid

Parole & Probation Division, Department of Public Safety

Jeanine Lake, Employee Representative, State of Nevada Employees' Association, AFSCME 4041, stated that Jo Ann Smith was present to appeal the denial of her reclassification request to an Administrative Assistant II. Ms. Lake stated that Ms. Smith's position had experienced significant change in duties and complexity. Ms. Smith's backup duties for the Administrative Assistant III have become more specialized, and the Department of Personnel acknowledged she has spent many hours completing Administrative Assistant III duties on a consistent basis.

Jo Ann Smith explained her backup duties to the Administrative Assistant III are technical and very complex. Ms. Smith stated that as backup she handles biohazards, including DNA, and is certified to operate DONS (Dangerous Offender Notification System). She explained the Administrative Assistant III was recently upgraded from an Administrative Assistant II because it requires the handling of DNA material. As backup, Ms. Smith thought her position should be upgraded for the same reason and asked the Commission to resolve her appeal.

Adrian Foster, Supervisory Personnel Analyst, Department of Personnel, explained that Ms. Smith's duties were consistent with the Administrative Aid class. Mr. Foster told how the other position in Ms. Smith's office was reclassified in August 2005, saying that Ms. Smith's appeal claims the DONS duties were used to reclassify an Administrative Assistant II position to Administrative Assistant III. In auditing Ms. Smith's duties, the Department found that some of the information collected on the Administrative Assistant III position in 2005 was not consistent with the analyst's current report on the position.

Mr. Foster reviewed the critical duties responsible for the Administrative Assistant III's reclassification as being the victims of crime program, additional accounting section employees to supervise, assisting a compensation analyst, and higher level authority to make decisions on who to hold or release while accepting a DONS hit request. Since 2005, these duties had either been removed or are not being performed. Mr. Foster referred to a letter of instruction dated October 26, 2005, which directed DONS operators to follow the chain of command when they receive a hit. DONS' operators were not authorized to respond to hits independently.

Mr. Foster stated the Parole & Probation Division is aware of the disparity between the class specification and the position's duties and the Department is working with them to bring it more in line with the classification. Mr. Foster explained a recent reorganization currently has the Administrative Assistant III supervising a Supply Technician I, grade 25, which compares to other Administrative Assistant III positions.

In responding to Chairman Enus' question, Mr. Foster stated the name of the Administrative Assistant III incumbent is Terra Kolpak. Commissioner Sánchez asked about the Administrative Assistant II position being excluded from the organization chart. Mr. Foster replied there currently isn't one, but it would be an Administrative Aid or Administrative Assistant I.

Mr. Foster continued to say Ms. Smith's position compares to other Administrative Aid positions in the State. She spends approximately 53 hours per month at the DONS desk along with several other support staff who backup the Administrative Assistant III position. Mr. Foster explained that Administrative Assistant I's are primarily used as DONS' operators and backed up by Administrative Aids, except that Las Vegas has an Administrative Assistant III. He stated the Administrative Aid and Administrative Assistant I duties are similar, except the Administrative Assistant I class requires a typing speed of 35 wpm. Administrative Assistant II's in the Parole & Probation Division supervise lower level clerical positions, conduct case file management, train and cross train staff and may serve as terminal agency coordinator.

Commissioner Sánchez addressed Ms. Smith regarding her request for back pay for working out of class. He asked what period of time her request covered and had she calculated the cost.

Ms. Smith responded she started as back up in the Emit Lab in January 2000; in October 2004, she was trained as backup operator for DONS; and since April 2005 she has been the backup for obtaining DNA samples. She had not calculated cost. In response to Commissioner Sánchez's question, Ms. Smith stated she was promoted to a new position in July 2006 to Accounting Assistant I but it had nothing to do with her appeal.

Commissioner Sánchez inquired how a typing certification is obtained. Mr. Foster stated it could be obtained almost anywhere, even the Internet. Commissioner Sánchez asked Ms. Smith why she hadn't obtained the certificate. Ms. Smith replied that neither her job as Administrative Aid, as backup to the Emit Lab and DONS, or as an Accounting Assistant I required one.

Ms. Smith stated that her appeal wasn't only based on her duties as backup to DONS but also included the handling of DNA samples, which are biohazards. She understood that to be the main reason why the Administrative Assistant III position was upgraded.

Chairman Enus asked Mr. Foster to explain the narrow scope for reclassification that Ms. Smith mentioned. Mr. Foster stated the position was not upgraded due to DNA collection, but an enhancement of duties that the Department later found were removed or were never performed. The Department is still reviewing where possible errors occurred with that study, because there was some misinformation that the analyst collected to allow the position to be moved. Mr. Foster explained that there are other classes at the same pay grade as Administrative Aid, such as Certified Nursing Assistant and Family Support Worker, where incumbents work in senior homes and may be exposed to biohazards. Therefore, DNA collection would not be a factor for upward movement.

Merritt Carlton, DPS Sergeant, Parole & Probation Division, explained that a few months ago the supervision duties were removed from the DONS operator; however, those duties have since been reinstated. When someone pointed out in their policy that it wasn't the DONS operator's responsibility to make custody-related decisions, Ms. Kolpak was instructed to follow the chain-of-command; however, the policy has since been revised to permit the DONS operator to make custody decisions. Mr. Carlton stated that Ms. Smith was a good employee and wished he could pay her more, but he understood the Department's position regarding the impact of granting her appeal on other positions statewide. Mr. Carlton explained that it somewhat ties their hands on who they can cross-train into these positions. They have a limited number of resources for a position that has to be manned every minute of every day. They have cross-trained many employees, but it's fallen onto Ms. Smith as the principal backup. Mr. Carlton stated that three other staff were cross-trained in addition to Ms. Smith. If the Commission grants the appeal resulting in only Administrative Assistant II's being permitted to backup their DONS operators, it will hurt his agency.

Ms. Lake responded that the three other Administrative Aids cross-trained were not performing the additional duties as Ms. Smith, such as DONS, DNA testing, or submission of urinalysis. It wasn't until after Ms. Smith's reclassification request was submitted that the backup duties were shared. Ms. Lake clarified that the Administrative Assistant III didn't have supervision duties for at least six months, but they were reinstated at the end of July 2006.

Chairman Enus asked Mr. Carlton about Ms. Smith serving as primary backup to Ms. Kolpak. As backup, Ms. Smith was DONS operator and she collected DNA. But as a backup position, his agency didn't feel it needed to be the level of an Administrative Assistant III or even an Administrative Assistant II.

Chairman Enus asked Ms. Smith if she ever received acting pay over the past two years. Ms. Smith replied her requests for +5% salary adjustment had been denied. She served as backup when the regular operator was sick or on annual leave. Director Greene stated that an employee is eligible for acting pay when assigned all of the duties of another position at a higher level for 16 consecutive days. Ms. Smith was aware of that but she asked the Commission to consider the complexity of the job and the grade difference between her position and Ms. Kolpak's position. Mr. Foster confirmed the Department found she did not meet the definition for working out of class and was not entitled to acting back pay.

Ms. Lake summarized the appeal asking the Commission to consider the complexity of the duties and the fact that at the time the NPD-19 was filed, Ms. Smith was the sole backup.

Mr. Foster closed by saying that Ms. Smith spends about 30% of her time as backup and it's not the preponderance of her duties, which is to collect fees. This fits the Administrative Aid class.

Chairman Enus viewed backup roles as an opportunity to learn the duties of a higher position and put oneself in a position of competing. The Commission was charged to look at the impact of their decisions, but they didn't want to diminish the contributions Ms. Smith made to her agency.

Commissioner Sánchez referring to Director Greene's March 2006 letter, which stated that if the duties were performed on a continuous basis and not indicated as a duty on Ms. Smith's work performance standards, she would be entitled to an adjustment or reclassification. Commissioner Sánchez's motion to deny the appeal was seconded by Commissioner Read and unanimously carried.

- B. Chairman Enus stated that the appeal of Carol Matrone and Kathy Raney had been postponed to the next Commission meeting.

Chairman Enus asked for Items IXC through IXE to be heard together. Commissioner Sánchez disclosed that he was a former colleague of Bob Burd, Personnel Analyst, Department of Personnel, in the late 1980's to early 1990's but said it should not influence his decision. Chief Deputy Attorney General Jim Spencer agreed.

Attorney Ken Long, Bar #6042, stated he represented Francis Arenas and requested that his appeal, Item IXE, be heard separately. Carolyn Ellsworth, Attorney, explained she had originally represented Mr. Arenas but found his issues were different from the other two appeals. Chairman Enus granted Mr. Long's request.

- C. 6 Compliance/Enforcement Investigator III's
John Arana, Warren Bailey, Scott Balder, David Evans, Mark Medina & John Nelson
Office of the Secretary of State
- D. Jackie Reese, Chief, Investigator Compliance & Enforcement
Office of the Secretary of State

Attorney Carolyn Ellsworth, Bar #45, speaking on Items IXC and IXD, explained that Secretary of State Dean Heller received approval from the 1999 Legislature to give his investigators peace officer status so they could complete affidavits and serve search and arrest warrants. With the statute amended, the incumbents submitted NPD-19's asking for reclassification from the Compliance/Audit Investigator series to the Criminal Investigator series, which existed at the time; however, the Department reallocated the positions to the Compliance/Enforcement Investigator series.

Ms. Ellsworth explained the incumbents in 1999 accepted the reallocation decision. In 2004, another reclassification request was submitted but denied due to lack of significant change from the 1999 study. She said the Department would not admit a mistake was made in 1999.

Ms. Ellsworth compared the duties of the appellants against the Compliance/Enforcement Investigator class specification highlighting duties that better described those of Compliance/Enforcement Investigators at the Department of Motor Vehicles. Ms. Ellsworth compared the enforcement activities of the appellants to the Criminal Investigator series specification and believed they were better described there as it reflects their peace officer duties.

Ms. Ellsworth stated the Secretary of State positions were identified as Category II, Peace Officer Standards & Training (POST). The Criminal Investigator series specification indicated that Category I, POST is required. The only difference between the two is that Category I peace officers are trained in traffic laws and enforcement and coroner law. Ms. Ellsworth stated there were several incumbents in the Criminal Investigator series working in the Department of Corrections that do not have Category I, POST certification, so it was obviously not a requirement. Ms. Ellsworth stated the NRS provides for the appointing authority to determine which level of POST certification its employees shall have.

In addressing Item IXD, Ms. Ellsworth stated appellant Jackie Reese performs all of the duties of the Secretary of State criminal investigators, and is the administrator and supervisor of the section. Ms. Ellsworth identified Mr. Reese as the TAC (terminal agency coordinator) of the NCIC system. He is responsible for ensuring that NCIC information is not mishandled and laws aren't broken.

Ms. Ellsworth summarized saying the appellants have been performing as criminal investigators and they should be classified as criminal investigators in order to comply with statute.

Chairman Enus asked Ms. Ellsworth to clarify the statute giving the Secretary of State criminal investigators peace officer status. Ms. Ellsworth read NRS 289.175, "Criminal investigators employed by the Secretary of State have the powers of a peace officer."

Chairman Enus asked whether there was a request presented to the 2005 Legislature when the 2004 NPD-19's resulted in no change. Ms. Ellsworth replied they did not as there is an existing class specification that the appellants' duties fit. Chairman Enus expressed the difficult position the Commission would have in making a ruling when it seemed there would have been a fairly straightforward solution for getting this issue reviewed at the Legislature as that was the entity that passed NRS 289.175.

Charles Moore, Securities Administrator, Office of the Secretary of State, explained he recommended peace officer status to Secretary of State Dean Heller in 1998. In 1999, he asked the incumbents to agree to the Compliance/Enforcement Investigator reclass because at the time they served a dual purpose. They were conducting compliance audits and investigations. The pay grade at the time for Criminal Investigator was grade 38, and the Compliance/Enforcement Investigator was grade 37, so there wasn't much difference between the two classes. In 2001, restructuring was done removing the audit functions and NPD-19's were re-submitted in 2004. Mr. Moore stated he was surprised by the Department's no change determination. The Department had recommended they go to the Legislature, but it wasn't presented in the normal budget process and they couldn't get it heard. Senator Raggio requested a compensation study and increases will be requested in 2007; however, the incumbents were compelled to proceed with their appeal, as they felt entitled to the two-grade increase the 2005 Legislature granted peace officers.

Chairman Enus thanked Mr. Moore saying it clarified the issue for her. She asked for discussion from legal counsel, the Commissioners, and Director Greene as the appellants were asking them to circumvent the system saying she didn't see how the Commission could make a decision. If there has been significant change in the scope of work and the Department agrees, the 2007 Legislature should be asked to make the correction.

Director Greene stated that Mr. Moore's comments were correct saying that Senator Raggio requested a compensation study of approximately 120 positions and include the results in the upcoming budget process. The Department sent a letter dated April 3rd to the Budget Director, which recommended the 120 positions that did not receive the increase in 2005 receive a two-grade increase in 2007. Director Greene stated that the Department of Personnel recommended all of the appellants receive a total of three grades.

Ms. Ellsworth was aware of Senator Raggio's request; however, the issue was that the incumbents are working as criminal investigators.

Commissioner Sánchez was having a problem with two issues Ms. Ellsworth had in her brief, 1) appellants are forever barred from seeking reclassification if they were incorrectly classified in the first place; 2) whether appellants must be reclassified to criminal investigators in order to legally exercise their powers of peace officer.

Chief Deputy Attorney General Jim Spencer agreed that this was probably the most complicated classification appeal he's seen. There were numerous issues the Commission couldn't address as it's beyond their authority to consider the effect of a compensation study. Whether the 1999 classification was right or wrong, it should have been appealed at the time and failure to do so is now seven years too late. He agreed with Ms. Ellsworth's point that if the positions are more properly aligned with criminal investigator that was within the Commission's authority. The argument they should be criminal investigators because they were referred to as criminal investigators in 1999, is a circular argument. Mr. Spencer stated he reviewed the statute and legislative history behind it, which indicated the three existing Compliance/Audit Investigator positions were the ones being considered for placement in NRS 289.175. There were other positions in existence in 1999 that weren't considered criminal investigators, so the term is used in a broader sense for the purposes of NRS 289.175 than it is in terms of saying it's a bootstrap directly to Compliance/Enforcement Investigators. There's a lot of other information in this record about an opinion that was written regarding AB577, which granted a two-grade increase to "certain" peace officers.

Mr. Spencer explained that he wrote an opinion from the Attorney General that was issued to define "certain" as those positions for which the Legislature had budgeted. One hundred and eighteen positions were not given that increase which was an issue that Gary Wolff and others took to Senator Raggio, which he believed resulted in the request for the compensation study. The Commission can't walk away from these issues and leave it up to the compensation study because Ms. Ellsworth had presented evidence that these positions are more favorably criminal investigator positions because those duties align. Mr. Spencer suggested the Commission look at the current alignment and functions of the positions under the constraints of significant change as defined in NAC 284.126, and felt the consideration of previous legislation and studies was extraneous.

Ron Cuzze, President, State Law Enforcement Association, explained that each legislative session they attempt to educate people on what law enforcement does. Every year criminals become more sophisticated and law enforcement has to adjust. The Secretary of State's positions have changed functions and are full-time criminal investigators. Mr. Cuzze stated the issue was not about AB577, but about being classified correctly.

Ms. Ellsworth added the 1999 decision was wrong and should be corrected no matter how much time has passed.

Bob Burd, Personnel Analyst, Department of Personnel, hoped to address the Commission's concerns and issues. It's the Department position that the significant change of the positions occurred prior to the 2004 study and was already addressed when they were reclassified in 1999. The reclassification requests had not been consistent nor did they specify a particular class or pay grade. The original bill draft request illustrates the term "criminal investigator" is purely descriptive. Mr. Burd reviewed the appellants' points of appeal explaining they were either accounted for in the 1999 study, are identified in the duty statements of their current classifications, or work is performed by similar or lower level staff.

Mr. Burd explained that the Secretary of State investigations are in specific programs or regulatory areas. Criminal Investigators (in the Department of Public Safety) have no limitation of programs and they require Category I POST certification; their criminal investigations involve crimes of homicide, sexual assault, and drug trafficking.

Mr. Burd explained the Department studied positions in the Inspections & Investigations occupational group in 1990. At that time, distinguishing characteristics were established. For 15 years the concepts have been applied consistently and nothing has occurred in the positions to breach the distinctions. The Compliance/Enforcement Investigator class specification indicates Category II, POST. Mr. Burd stated he had met with a DPS Major of the Division of Investigations in Southern Nevada, and found the key distinction is that criminal investigators in the Department of Public Safety are a go anywhere, do anything kind of unit.

Ms. Ellsworth reminded the Commission that criminal investigators classified as Criminal Investigators in the Department of Corrections are not Category I, POST. Ms. Ellsworth argued that there isn't a classified position that performs every duty indicated on their particular class specification. To say a homicide, sexual assault, or drug trafficking investigation is more difficult than white-collar securities fraud or other felony fraud crimes is not true.

Mark Medina, Compliance/Enforcement Investigator II, Secretary of State's Office, testified that when he worked as a criminal investigator with the Inspector General's Office they worked together with the Division of Investigations on homicides. Mr. Medina stated he would much rather investigate a sexual assault over securities fraud. He added that in 1999 they did specify the Criminal Investigator class and pay grade on their NPD-19's.

Commissioner Sánchez asked if the Secretary of State requested Category II, POST. Mr. Burd stated the Secretary of State requested Category II, but not the police/fire retirement contribution plan.

Commissioner Sánchez asked Mr. Medina if he carried a badge. Mr. Medina replied he did and it indicated "investigator." Referring to a recent recruitment for Criminal Investigator not requiring Category I or II, he asked for an explanation.

Director Greene didn't know specifically, but remembered reading it in Ms. Ellsworth's brief. That recruitment was posted for approximately one week and then was removed. Currently, the employees hired into those positions have one year to obtain Category I POST certification.

Commissioner Fox asked about the incumbents classified as Criminal Investigator who don't have Category I POST. Would that mean they're a new hire?

Director Greene explained those positions were in the Department of Corrections where there has been some confusion with the class specification. They are required to have Category I POST within one year of appointment. Some individual's employed over one year do not have it, and on June 26th the Department of Corrections requested a formal Attorney General's Opinion. The Attorney General's Office was still working on it at the time of this meeting.

Ms. Ellsworth reiterated that the only difference between Category I and II is traffic and coroner laws that entail several more weeks of training. Mr. Medina added that NAC 289.130 specifies that in order to be Category I, the peace officer must have primary responsibility to do routine patrol, conduct criminal investigations, enforce traffic laws, and investigate motor vehicle accidents. Mr. Medina stated that his spouse worked as a Criminal Investigator III at the Division of Investigations for six years and she never performed routine patrol, enforced traffic laws, or investigated motor vehicle accidents. She conducted criminal investigations just like he did, but when it involved fraud her department worked with his because that was the Secretary of State Office's specialty.

Mr. Medina referring to NAC 289.130, stated that administrators of each agency shall determine the appropriate training category for the officers employed by his agency. Commissioner Fox asked Mr. Medina to read the responsibility of a Category II peace officer. "Training category II includes peace officers whose authority or primary duties are limited to a specific or specialized area of law enforcement."

Mr. Burd added that the distinction of Category I also includes issues for pursuit driving which criminal investigators could be involved in. They weren't talking about the difficulty or complexity of investigations, but the intent of the classifications. It was the distinction of performing all criminal investigations statewide versus a program specialty.

Mr. Cuzze asked the Commission to look past the NAC 289.130 training categories because they're antiquated. He stated that investigators perform a very sophisticated job and the worst investigations are white-collar crimes. Most investigators come from a Category I agency to those positions, i.e., Highway Patrol, Capitol Police and University Police, so they've been trained in all areas of peace enforcement. Mr. Cuzze believed the Department was narrowly focusing in on minute regulations that shouldn't apply.

Ms. Ellsworth corrected Mr. Burd's earlier interpretation of NAC 289.130, subs. 4, saying the sentence, "The administrator of each agency shall determine the appropriate training category for the officers employed by his agency" applied to all four subsections, not just subs. 4. Referring to NAC 284.150, Ms. Ellsworth read, "The use of a particular expression or illustration as to duties must not be interpreted to exclude others not mentioned but that are of similar kind and relevant to the class."

Jackie Reese, Chief, Compliance & Enforcement Investigator, Office of the Secretary of State, explained how they became a law enforcement agency. Mr. Reese stated that Category I training doesn't make a better investigator nor is it necessary for their jobs. The unit's role has evolved from compliance and audit functions to full-time investigation and they are functioning as criminal investigators.

Mr. Burd presented the Department's response to Mr. Reese's appeal saying his position was reclassified in 1999 resulting in a three-grade pay increase. The 2004 review of the position indicated that:

- Significant change had not occurred since 1999
- Upward reporting relationship had lowered
- Span of control regarding supervision had decreased
- Additional duties assigned are also performed by lower level classes

Mr. Burd compared the 1999 and 2004 NPD-19's and identified the similarities and differences. He cautioned the Commission saying that both Mr. Reese and Mr. Arenas claim to supervise the same investigators. Mr. Burd asked the Commission to deny Mr. Reese's appeal.

Ms. Ellsworth read the class concept for Supervisory Criminal Investigator I saying that Mr. Reese's duties fit squarely within that class. She added the investigators were asking for reallocation to Criminal Investigator III.

Commissioner Sánchez felt the Department had followed their procedures and he couldn't find any flaws; however, something was still lacking. Testimony that bothered him was Mr. Reese speaking on the evolution of the positions, but the analyses didn't really show it, and they heard bifurcation in terms of auditing and criminal investigation.

Commissioner Eastwick stated he agreed with Commissioner Sánchez and asked whether the appellant's positions had been compared to other criminal investigators within the State.

Mr. Burd replied the DPS Major at the Division of Investigations indicated the Criminal Investigator series specification was intended to give their investigators the ability to go anywhere and do anything. They are not limited to any particular program as are the Secretary of State's investigators.

Commissioner Fox asked if the appeals were granted, what impact would it have on the POST certification. Would the appellants be required to become Category I? Mr. Spencer replied they would as the class specification requires it. Director Greene stated the class specification does require Category I. For a position to be reclassified, the employee must meet the minimum qualifications.

Commissioner Sánchez asked about fiscal impact. Director Greene responded that the appeals would be retroactive to 2004 resulting in a stale claim that would need to be approved by the Board of Examiners.

Kim Huys, Chief Deputy Secretary of State, stated they hadn't conducted a budgetary analysis so she wasn't able to say for certainty that the agency could absorb those costs.

Chairman Enus summarized the discussion to this point, stating she was concerned about the fiscal impact of granting the appeals and how the POST training levels are determined. The class series for the Compliance/Enforcement Investigator positions clearly speaks to the level of POST training required.

Appellant John Arana stated the argument was based on a class specification that was erroneous in requiring Category I POST. NAC 289.130 has higher authority over the class specification. He suggested amending the class specification to permit the agency administrator the ability to choose the level of training, which is more in line with NAC 289.130.

Commissioner Sánchez asked what would happen if the class specification was changed. Mr. Burd replied they would still be faced with the distinguishing characteristics and the intention of that series classification. Commissioner Sánchez thought amending the specification would give agencies more flexibility. Mr. Burd was concerned about that interpretation because if it truly is up to the administrator, why wouldn't they ask for Category I?

Mr. Arana replied that the Secretary of State made a distinction and it was State Personnel who was in violation of the NAC by requiring Category I. The distinguishing characteristics are only examples.

Commissioner Sánchez asked Director Greene about the inconsistencies between the NAC and class specification. Director Greene said they relied upon the NRS which defines the positions that are Category I and Category II.

Ken Goodly, Personnel Analyst, Department of Personnel, added that the Secretary of State did make the distinction for Category II.

Mr. Arana added that in looking at NRS 289 where it lists all the peace officers, a lot of them are limited in the scope of their duties. That is not true of the Secretary of State investigators as they are permitted to go anywhere and are not limited in their authority.

Mr. Cuzze clarified that NRS is the law, and NAC and class specifications are substandard to NRS. He was concerned about investigators in the Division of Investigations if the appeal was denied, as they would be required to perform routine patrol, enforce traffic laws, and investigate motor vehicle accidents.

Chairman Enus stated the Commission wouldn't be making any decisions on what POST training levels are required. If there were inconsistencies between NRS and NAC, they would leave it up to the Department to resolve. She reviewed what the Commission was to consider.

Mr. Arana stated that what the NAC says is the preponderance of duties must meet one class as opposed to another. Mr. Goodly replied the Department found the preponderance of duties fit their current class specification, Compliance/Enforcement Investigator.

Commissioner Read stated he wasn't an attorney and knew little about human resources, but it appeared to him that a mistake was made and the appellants are definitely acting as criminal investigators. He found there was significant change since the 1999 study, and made a motion to grant the appeals under Items IXC and IXD. Commissioner Eastwick seconded the motion, which carried 4 to 1 with Chairman Enus voting against.

Chairman Enus called a 5-minute break at 1:16 p.m.

When the meeting reconvened, Commissioner Fox asked whether they could discuss the abeyed regulation changes before hearing the next appeal because she had a meeting and would need to leave by 2:00 p.m. Mr. Arenas' attorney, Ken Long, stated he had a 1:30 p.m. court appearance that he was already late for, and would only take 5 to 10 minutes. Chairman Enus replied they would proceed in order.

E. Francis Arenas, Chief, Enforcement & Registration
Office of the Secretary of State

Commissioner Fox asked Director Greene whether granting the appeals under Items IXC and IXD impacted the appeal under Item IXE. Director Greene stated it did and in discussing with staff during the break the Department agreed to reallocate Mr. Arenas' position to grade 43 based upon the previous decision. Ken Long, Attorney, thanked the Director.

Commissioner Sánchez's motion to grant the appeal under Item IXE was seconded by Commissioner Eastwick and unanimously carried.

Chairman Enus returned to the abeyed agenda items from Item VII, Sec. 5 and Sec. 12.

Sec. 5 NEW Report of arrest, conviction, or traffic violation

Shelley Blotter, Chief of Technical Services, Department of Personnel, had redrafted Sec. 5 based on what she heard as their direction or at least those things they were seriously considering. In addition, a conversation occurred with the employees' association and the specific language of reporting traffic violations will be required for all employees.

Chairman Enus asked whether Jeanine Lake and Gary Wolff received a copy of the redraft. Mr. Wolff stated he'd seen it and wasn't totally happy but didn't want to continue arguing. He thought time would be the judge and he still has a huge problem with someone having to report a traffic violation.

Ms. Lake stated her office still objects to the redraft language mainly because it deals with misdemeanors.

Ron Cuzze, President, Nevada State Law Enforcement Officers Association, objected to the whole thing because it goes against the basic principle and meaning of the 5th Amendment. Mr. Cuzze asked why employees should be required to self-incriminate themselves. If it were written to identify specific types of violations needed to be reported maybe they could agree with it.

Tom Donaldson, Esq., on behalf of the Nevada Corrections Association and the Nevada Department of Public Safety Association, stated the revised language at the end of subs 1 is still objectionable because scheduling is not affected by a violation of traffic law generally paid through the mail. Mr. Donaldson recommended that violation of traffic laws be stricken from subs. 1.

Commissioner Eastwick asked if this section applies to any criminal offense whether or not related to work. Ms. Blotter replied it covers misdemeanor, gross misdemeanor and felony crimes. The appointing authority would then determine whether it has any bearing on their employment.

Kareen Masters, Deputy Director, Administrative Services, Department of Health & Human Services, recommended adding the word *disciplinary* before *action* in subsection to Sec. 5, "Nothing in this section precludes *disciplinary* action otherwise provided for by NAC 284." Ms. Blotter stated it could be added.

There being no further comments or questions, Commissioner Fox's motion to adopt Sec. 5 as redrafted was seconded by Commissioner Sánchez and unanimously carried.

Sec. 12 NAC 284.884 Maximum allowable concentrations of alcohol in blood or breath of employee; confirmation of positive result on screening test of breath

There were no additional comments or questions on this section.

Commissioner Fox's motion to adopt Sec. 12 as presented was seconded by Commissioner Sánchez and unanimously carried.

X. Uncontested Classification Action Report
Posting Notices 05-06, 06-06 and 07-06

No action required.

XI. Comments from the General Public

There were none.

XII. Select Next Quarter Meeting Date

Director Greene stated the next meeting is tentatively scheduled for December 1, 2006, in Las Vegas, and they needed to schedule another meeting for the spring preferably before the legislative session began. The Commission selected February 2, 2007, without specifying location.

XIII. *Adjournment

Commissioner Read's motion to adjourn the meeting at 1:41 p.m. was seconded by Commissioner Eastwick and unanimously carried.